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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ABBEY DENTAL CENTER, INC., a Nevada Corporation,

Plaintiff,

v.

CONSUMER OPINION LLC, a Nevada Limited liability company; DOES 1-10; and ROE ENTITIES 1-10, inclusive,

Defendants.

Case No.: 2:15-cv-02069-GMN-PAL

DEFENDANT CONSUMER OPINION LLC'S MOTION FOR TEMPORARY STAY OF CASE UNTIL THE RULING ON DEFENDANT'S SECOND SPECIAL MOTION TO DISMISS FIRST AMENDED COMPLAINT PURSUANT TO NRS 41.660 AND MOTION FOR SUMMARY JUDGMENT (DOC. # 30)

Defendant Consumer Opinion LLC ("Defendant" or "Opinion") hereby moves this Court to temporarily stay further actions in this case until the Court has ruled upon Defendant's Second Special Motion to Dismiss First Amended Complaint Pursuant to NRS 41.660 and Motion for Summary Judgment (Doc. Nos. 30-31) (the "Anti-SLAPP Motion"). Resolution of that Motion could dispose of this case in its entirety, and it does not make sense to subject the Parties to the expense of moving this case forward until that Motion has been decided.

This Motion is necessary because this is a Strategic Lawsuit Against Public Participation ("SLAPP" suit). The point of the suit is not to bring supportable claims but to harass the Defendant. In these cases, the plaintiff hopes that the pressure of continued litigation costs and abusive discovery will force the defendant to engage in self-censorship rather than resolve the claims on the merits.

While the Anti-SLAPP statute and Rule 56 permit the parties to file a motion to take targeted discovery, Defendant (instead of making Plaintiff file a motion) voluntarily participated in pre-Rule 26 conference discovery (Doc. No. 35-2). Plaintiff produced extensive responses to Plaintiff's discovery requests (Doc. Nos. 34-2 to 34-4, 35-21), and agreed to produce a 30(b)(6) witness for deposition (Doc. Nos. 35-12, 35-13, 35-19, 35-22). Moreover, both Parties have agreed that additional discovery is unnecessary. (*See* Doc. Nos. 36 at 17, 37 at 17). However, throughout the process, Plaintiff has made it clear that its desire is only to increase Defendant's fees.

Normally when a motion is filed under Nevada's Anti-SLAPP law in Nevada state court, all further action in the case is stayed unless the non-moving party makes a specific motion with specific requests for discovery. *See* NRS 41.660(3)(e). Since the Anti-SLAPP statute is meant to address abusive lawsuits to thwart free speech, this stay occurs to prevent a plaintiff from driving up a defendant's costs before the court decides the motion. However, in federal court, the Anti-SLAPP statute's procedural rules likely do not apply; only its substantive provisions do. While the issue has not yet been specifically addressed by Nevada's federal courts, NRS 41.660(3)(e) is most likely inapplicable to this case as its California analogue's discovery stay has been found to be a procedural component of the statute, separable from the substantive provisions.

While this specific issue has not been decided in this Court, California's federal courts have discussed whether to apply a stay pursuant to California's

Anti-SLAPP statute.[1] In *Aeroplate Corp. v. Arch Ins. Co.*, the U.S. District Court for the Eastern District of California held:

> [T]he discovery limiting provisions of [the California Anti-SLAPP statute] collide with the discovery-permitting provisions of Rule 56, and therefore are not available in federal court unless either: (1) the factual basis of the case has been developed through discovery or similar prior proceedings to the extent a motion for summary judgment would be appropriate; (2) the parties agree that further discovery is not necessary; or (3) **the only issue presented by the motion is an issue of law** and the motion is suitable for decision as a motion to dismiss pursuant to Rule 12(b)(6).

2006 U.S. Dist. LEXIS 82180, at *9 (E.D. Cal. Nov. 9, 2006) (emphasis added) (internal citations omitted). California courts have also focused on whether discovery is "essential to [the plaintiff's] opposition under Rule 56." *See, e.g., New Net, Inc. v. Lavasoft*, 356 F. Supp. 2d 1090, 1101 (C.D. Cal. 2004); *Price v. Stossel*, 590 F. Supp. 2d 1262, 1269 (C.D. Cal. 2008) (collecting cases).

In this case, all three factors are present. There has already been extensive factual discovery. The Parties have agreed that additional discovery is unnecessary. Finally, for all of Plaintiff's claims, the only issues presented by Defendant's Motion are pure issues of law.

Moreover, this Court has the inherent power to manage its docket under Rule 16 of the Federal Rules of Civil Procedure. The Court should use that power to give effect to the spirit of the Anti-SLAPP statute without invoking its procedural provisions. Defendant's request is compatible with the Court's power to allow or deny additional discovery under Fed. R. Civ. P. 56(d) when a motion for summary judgment is pending. While the Court is not required to stay the case in this instance, it makes little sense to demand the Parties continue running up litigation costs when their efforts may be entirely for naught if Defendant's Motion is granted.

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[1] California's Anti-SLAPP statute is so similar to Nevada's that Nevada courts have ruled that Nevada judges should look to it for guidance in interpreting Nevada's statute. *See John v. Douglas County Sch. Dist.*, 125 Nev. 746, 754 (2009).

For all of the reasons discussed in the Anti-SLAPP Motion (ECF Nos. 30-31) and Defendant's Opposition to Motion for Extension of time to Respond to the Anti-SLAPP Motion (ECF No. 35), it is readily apparent that this case is fully briefed for a resolution as a matter of law, and no amount of additional factual development will change the outcome. Accordingly, any continued action in the case, until the Anti-SLAPP Motion is resolved, is unnecessary and likely a waste of the Parties' and the Court's resources. As a matter of judicial economy, the Court and the Parties would be better served if this matter were stayed while the Court resolves the Anti-SLAPP Motion. Thus, Defendant respectfully requests that the Court grant the instant Motion.

Dated this 8th day of February , 2017

Respectfully Submitted,

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 8, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document being served via transmission of Notices of Electronic Filing generated by CM/ECF.

Respectfully Submitted,

Employee,
Randazza Legal Group, PLLC